

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRESNO TRUCK CENTER,

Plaintiff,

vs.

PERFORMANCE TRUCK LEASING LLC,
MICHAEL FRYE, and DERRICK STEWART,

Defendants.

Case No. 2:13-cv-00115-LDG-NJK

REPORT & RECOMMENDATION

This matter is before the court on Defendants' failure to comply with the Court's Order (Dkt. #19). On June 28, 2013, Defendant's former attorney, Steven L. Morris, filed a motion to withdraw as counsel of record indicating that Defendants were no longer able to pay the attorneys' fees and costs necessary to represent Defendants in this action. *See* Motion to Withdraw, Docket No. 17. The Court granted that Motion on July 1, 2013. *See* Court Order, Docket No. 18. The Court advised that a corporation cannot appear except through counsel and ordered Defendant Performance Truck Leasing, LLC, to retain new counsel by August 1, 2013. *Id.* Additionally, the Court ordered Defendants Michael Frye and Derrick Stewart to either retain new counsel or file a statement that they will be proceeding *pro se* by August 1, 2013. *Id.* The Court warned that failure to comply with its order may result in a recommendation to the District Judge for sanctions, including case-dispositive sanctions. *Id.* To date, Defendants have not complied with the Court's order.

On August 5, 2013, the Court issued an Order to Show Cause instructing the Defendants to show cause, in writing, no later than September 2, 2013, why they should not be sanctioned and/or why the Court should not recommend that default judgment be entered against them for failure to defend and failure to comply with the Court's prior order. *See* Court Order to Show Cause, Docket No. 19. The Order advised Defendants that failure to comply would result in a recommendation to the District Judge that default

1 judgment be entered against them. *Id.* Defendants have not complied or requested an extension of time in
2 which to comply.

3 Accordingly,

4 **IT IS THE RECOMMENDATION** of the undersigned United States Magistrate Judge that
5 Defendants' Answer to the Complaint (#12), be stricken.

6 **IT IS FURTHER RECOMMENDED** that the Clerk of the Court enter default judgment
7 accordingly.

8 Dated this 9th day of September, 2013.

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12 **NANCY J. KOPPE**
13 **UNITED STATES MAGISTRATE JUDGE**

14 **NOTICE**

15 These findings and recommendations are submitted to the United States District Judge assigned
16 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being
17 served with these findings and recommendations, any party may file written objections with the court.
18 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
19 recommendations of a magistrate judge shall file and serve *specific written objections* together with
20 points and authorities in support of those objections, within fourteen days of the date of service of the
21 findings and recommendations. The document should be captioned "Objections to Magistrate Judge's
22 Findings and Recommendations." The parties are advised that failure to file objections within the
23 specified time may waive the right to appeal the District Court's Order. *Martinez v. Ylst*, 951 F.2d 1153
24 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject
25 to the page limitations found in LR 7-4.
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